

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WELLS FARGO BANK, N.A.

No. C-06-0524 JCS

Plaintiff(s),

v.

JERRY C. APODACA, ET AL.,

**ORDER DENYING EX PARTE MOTION  
FOR ORDER FOR PUBLICATION OF  
SUMMONS**

Defendant(s).

TO ALL PARTIES AND COUNSEL OF RECORD:

Defendants and Cross-Claimants Mallory P. Hill and Coventry Capital Management Limited (the “Hill Defendants”) have applied to this Court for an order for service of summons by publication [Docket No. 27.]. The motion is DENIED without prejudice for the following reasons.

California Code of Civil Procedure Section 415.50 permits service by publication. Service by publication must be in a newspaper that is “most likely” to give actual notice to the party to be served. C.C.P. § 415.50.

In this case, actual service was only attempted twice – at a private post office box that Mr. Apodaca apparently cancelled in 2005, located at 8941 Sunset Boulevard, Los Angeles, California, and at 914 Westwood Boulevard, again on a private mail box at Mailboxes, Etc.

These efforts are insufficient. First, in addition to the two addresses listed, the Court has received mail from an additional address that is reflected in the docket in the instant case. [Docket No. 26.] No research regarding that address has been provided to the Court. Second, Plaintiff, Wells Fargo Bank, N.A., indicated that it has had e-mail contact with the Apodaca Parties. There was no effort described in the declaration of diligence in this matter to indicate whether any e-mail

1 contact was attempted by the Hill Defendants. Moreover, the Court's records indicate various  
2 telephone numbers for Mr. Apodaca, and no effort has been made regarding those telephone  
3 numbers. Mail addressed to Mr. Apodaca at 914 Westwood Boulevard, Los Angeles, California has  
4 not been returned – indicating that this mail box is indeed active. Finally, no information has been  
5 provided to the Court on whether Mr. Apodaca is the only proper person (or is indeed a proper  
6 person) to receive service on behalf of Coventry Capital, Ltd.

7 Under all of these circumstances, attempts on two occasions to serve Mr. Apodaca are  
8 inadequate to demonstrate diligence under the statute. Further efforts must be made regarding the  
9 other addresses, telephone numbers, and e-mails identifying this motion. In addition, because the  
10 Westwood Boulevard mail box is still active, further efforts to serve Mr. Apodaca at that address  
11 may be appropriate.

12 Because the motion is being denied, the Court need not address other issues raised by the  
13 instant application. However, the Court notes that the instant application requested notice by  
14 publication in The Recorder. The application does not indicate the circulation of The Recorder or  
15 the scope of its subscribers. While the Court would accept a publication in a newspaper of broad  
16 circulation, such as The Los Angeles Times, in order to justify another publication detailed  
17 information must be provided.

18 IT IS SO ORDERED.

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20 Dated: May 16, 2006

  
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JOSEPH C. SPERO  
United States Magistrate Judge